

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN GERRY DEVLIN**, on March 9, 1999 at 8:05 A.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Gerry Devlin, Chairman (R)
Sen. Bob DePratu, Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Dorothy Eck (D)
Sen. E. P. "Pete" Ekegren (R)
Sen. Jon Ellingson (D)
Sen. Alvin Ellis Jr. (R)
Sen. Bill Glaser (R)
Sen. Barry "Spook" Stang (D)

Members Excused: None

Members Absent: None

Staff Present: Sandy Barnes, Committee Secretary
Lee Heiman, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB248, 3/5/1999; HB 108,
3/5/1999
Executive Action: SB 514, SB 212, SB 441

HEARING ON HB 248

Sponsor: REPRESENTATIVE DAN W. HARRINGTON, HD 38, BUTTE

Proponents: Robert McCarthy, Butte-Silver Bow
Alec Hansen, League of Cities and Towns
Chris Gallus, Montana Chamber of Commerce

**Evan Barrett, Montana Economic Developers
Association**

**Opponents: Dave Woodgerd, Chief Legal Counsel, Department of
Revenue**

Opening Statement by Sponsor:

REP. DAN HARRINGTON, HD 38, Butte, said that in Butte-Silver Bow, when the water system was changed over, one of the things that occurred is that the Department of Revenue decided that the Silver Lake part of the water system would be charged a beneficial use tax. He said the Silver Lake water is used primarily by three companies, ARCO, MRI and ASiMI, but it is an integral part of the Butte water system. The Department is claiming that a beneficial use was given to these three companies for the Silver Lake water, even though it is part of the Butte-Silver Bow water system as a whole.

REP. HARRINGTON said that **HB 248** clarifies that water and sewer utility services by a municipality or a district to industrial and commercial users does not constitute a beneficial use of the utility service by the industrial or commercial user.

Proponents' Testimony:

Bob McCarthy, Butte-Silver Bow Planning Attorney, summarized the creation of this legislation. He said in 1992 Butte-Silver Bow acquired the municipal water system from the Washington Corporation, and since that time they have operated this as a municipal utility. In late 1996, Silver Lake water system was transferred to Butte-Silver Bow, and it became a part of the municipal water utility. However, the financing source to improve and maintain this system was provided by ASiMI, MRI and ARCO through a complicated system of contracts. In 1998, the Department of Revenue determined that this water fell under the beneficial use tax. He reiterated that this is owned, operated and treated by Butte-Silver Bow and should not be under the beneficial use tax. This legislation clarifies that, and they request support for **HB 248**.

Alec Hansen, Montana League of Cities and Towns, said he supports **HB 248** on behalf of all the other 127 cities and towns. He said the simple point of the bill is if a municipal utility service can somehow be construed as a beneficial use and this particular portion of law is not clarified, problems could arise all over the state of Montana when industrial properties begin to be developed and municipal utilities service part of that development. This bill simply clarifies that this utility system

is not a beneficial use and it keeps the economic development package together as initially proposed to the company by the county, and the passage of this bill will have a positive effect all across the state of Montana.

Chris Gallus, Montana Chamber of Commerce, said his organization supports **HB 248**. He said this situation has statewide implications, and they encourage passage.

Evan Barrett, Montana Economic Developers Association, said his association supports this legislation. He said they see this legislation as something needed to ensure that as we pursue economic development across the state in every community, that this beneficial use tax that was proposed to be imposed by the Department of Revenue in the case of Butte-Silver Bow's Silver Lake water system would not become an impediment to future economic growth across the entire state of Montana. He said this could put Montana cities at a competitive disadvantage, and he urged the committee to pass **HB 248**.

Opponents' Testimony:

Dave Woodgerd, Chief Legal Counsel, Department of Revenue, testified that the Department opposes **HB 248**. He thanked **REP. HARRINGTON** for the amendments to this bill. He said they do clarify to a large extent some of the original problems with the bill in terms of making the language more narrow and more specific. He said the Department also appreciated the effort on the part of people from Butte-Silver Bow to solve this situation.

Mr. Woodgerd said this bill affects statutes that apply to everyone, all taxpayers in the state. The issue is how this bill, and any exemptions to the beneficial use tax, affects the application of that bill to the Bonneville Power Administration power lines as they go across the state. He said Montana has had in place for a long time a beneficial use tax which is essentially a property tax that applies to the use of property that is tax exempt. If property is owned by someone that for some reason is tax exempt and it is used for a commercial purpose by someone else, there is a tax that applies based on the contract rights that exist between the exempt person and the person that is using it for a commercial purpose.

Mr. Woodgerd said that in 1983, an amendment was passed which specifically applied the beneficial use tax to the power lines running from Colstrip to the northwest power grid. He said that the federal government and the utilities had raised the issue that this tax was only aimed at the federal government, and the Department had argued that that was not the case, that it applied

to any exempt utility or entity where there is an industrial or commercial use by someone else. Because of that, the Department does oppose exemptions to the beneficial use tax.

Mr. Woodgerd said that the reason the Department intends to tax the Silver Lake water system is because there is a very specific contract that exists, particularly with Montana Resources, which has exclusive use of the water in the Silver Lake water system, even though it is owned by the Butte-Silver Bow. He said the Department opposes this legislation simply because this exemption for utilities comes dangerously close to creating Constitutional issues for the tax that is now being applied to federally owned power lines. He said the loss of this tax would be devastating to local governments and school districts.

Questions from Committee Members and Responses:

SEN. ELLIS said that he was interested in the stipulations that Butte-Silver Bow has with the water users which in the Department's view clearly might have implications on this tax, and he asked if Butte-Silver Bow's contract could be changed in a manner that would change the Department's assessment of their tax status. **Mr. Woodgerd** said they could do that and the Department has had those discussions with them about trying to do that. He said Butte-Silver Bow feels they would have a difficult time achieving renegotiation of that contract, but it would be legally possible to make those changes.

SEN. ELLIS asked if Butte-Silver Bow had discussed this possibility with the users, and **Mr. McCarthy** said this had been discussed with their customers. He explained that the part of the contract that seems to be the issue is the part that says in the case of a catastrophe, MRI can demand 18 million gallons per day on a short term. This has never occurred. The system is such that it can accommodate this kind of a catastrophe and still provide water to everyone else. He said the Department had told Butte-Silver Bow that they feel the contract is so flawed that it cannot be remedied. He said Butte-Silver Bow completely agrees with the application of the beneficial use tax to utilities that are privately owned, but they do not think publically owned assets should be taxed in this way.

SEN. STANG said there are also three other assessments in this bill, and he asked if the Department could explain the one in Missoula County. **Gene Walborn, Department of Revenue**, explained that the one in Missoula County is the Grant Creek Waterworks. That services the Reserve Street exit and all the commercial and industrial properties on Reserve Street. He said it has been in existence since 1992.

SEN. STANG then asked about the one in Deer Lodge County, and **Mr. Walborn** said that is part of the Butte-Silver Bow system. **SEN. STANG** asked if there had been any other municipal water systems before this one that has been assessed with the beneficial use tax, and **Mr. Walborn** said that the Department had provided a list for the Revenue Oversight Committee that had the detail of all the other privilege tax and beneficial use tax companies, and the only ones were the ones in Missoula County. He said the Department would provide that to the committee.

SEN. STANG asked **Mr. Woodgerd** about **Mr. McCarthy's** comment that the Department had told them that the contract could not be remedied. **Mr. Woodgerd** said he did not remember the Department saying the contract could not be reformed. He said it would require cooperation from the companies involved as well as Butte-Silver Bow, and he felt it could be rewritten to avoid the problem.

SEN. ELLINGSON said **Mr. McCarthy** had characterized the contract as the one that services not only MRI but also ASiMI and ARCO, yet **Mr. Woodgerd** had characterized it as an exclusive contract. He asked him to explain. **Mr. Woodgerd** said there are three separate contracts that exist, one for each of those companies, but they are also interdependent in that they recognize each other. The one with Montana Resources recognizes that under certain circumstances Montana Resources has the right to have exclusive use of that system and any water in it. The other contracts with ASiMI and ARCO recognize that right and recognize the fact that they have secondary rights.

SEN. ELLINGSON asked if MRI has ever had the condition which gave it the right to use this water exclusively, and **Mr. Woodgerd** said he did not know. He understood that it probably had not occurred.

SEN. ELLINGSON asked what other tax exempt entities or utilities are being taxed for beneficial use besides BPA, and **Mr. Woodgerd** listed Northern Energy, Red Lodge Chamber of Commerce, Yellowstone Furniture Company, Lake McDonald Lodge, Blackfeet Writing Instruments, Helena Regional Airport, and Montana Athletic Club. **SEN. ELLINGSON** asked if there are any other utilities besides Missoula and Deer Lodge, and **Mr. Woodgerd** said there were not any others. **SEN. ELLINGSON** asked if the Grant Creek Waterworks was owned by the municipality, and **Mr. Woodgerd** said Grant Creek Water System is owned by the County.

SEN. BOHLINGER said **Mr. Barrett** had talked about the importance of available and affordable water as a key ingredient to expanding the job base and industrial base of Montana, and that

nowhere in this region do states impose a tax on water systems. He wondered if he knew of any outside of the region that might tax water, and **Mr. Barrett** said they had not researched that, that they concentrate their efforts in the area of competition for Montana.

SEN. BOHLINGER asked what this tax amounts to and what kind of a disadvantage this tax creates for Montana. **Mr. Barrett** said the impact is estimated at \$300,000 for those three customers. That needs to be related to the actual cost of the water. He said the cost of water could be doubled with the imposition of this tax because the low-cost availability of reliable water was an incentive.

SEN. ECK asked about comments made that one of these companies had paid some up-front costs in this contract, and she wondered if that had any impact on the issue. **Mr. Woodgerd** said that the Department's view is that it is the contract itself and the rights under that contract that are the important issues.

SEN. ECK then asked if there had been any indication from the federal government or Bonneville that they are watching this situation. **Mr. Woodgerd** said the Department had had nothing directly from the federal government that would indicate one way or the other.

SEN. ECK asked if all that is going on in the utility industry with deregulation and the assortment of new providers, whether this tax will be a major factor in any of the decisions of these companies regarding their activities. **Mr. Woodgerd** said he did not believe so because he did not think there is going to be a large amount of utility property owned by tax exempt organizations. He did say, however, that to the extent there might be, it could be a factor.

SEN. ECK said the Fiscal Note mentioned that long term the exemption could jeopardize the strength of the statute, and she wondered if he had any specifics of how it might and how much the beneficial use tax now brings into Montana. **Mr. Woodgerd** said that the Department's concern is the issue that was raised in the lawsuit concerning the claim by the federal government and the power companies that the tax that was being applied to them was targeted to them and therefore violated the United States Constitution on an equal protection basis and that it was just aimed at federally owned property used by industrial users. To the extent that we continue to exempt things other than federally owned utility property, we get closer and closer to having it becoming exactly what they were saying we had, a tax that only applied to federally owned property, and therefore will be

susceptible to becoming a violation. In terms of the total of beneficial use tax, the Department could provide that. **SEN. ECK** asked if it was significant, and **Mr. Woodgerd** said it was very significant, in the millions of dollars.

SEN. STANG said it seems that the main reason that this particular utility is being taxed is because there is an exclusive use in the contract to MRI. He wondered if all the water in the system was being taxed or just the water that goes to MRI. **Mr. Woodgerd** said what is actually being taxed is the extent of the contract right. He said it does not provide that at all points in time MRI has exclusive use. At this time, there are only these three industrial customers to this water system, and these three have an exclusive right. What is being taxed is the value of the contract right for each one.

SEN. STANG asked why the other two entities are being taxed when it seems that the real exclusive right is with MRI, and **Mr. Woodgerd** said the Department is looking at the rights that ARCO has in this contract because they feel their situation may be the same as MRI. However, ASME is essentially in a second position. They do have some very strong contract language that will allow them, if they need it and if MRI did not need it, to cut off anybody below them in terms of priority. He said it is something the Department is looking at very closely.

In light of the fact that this could jeopardize the electrical benefit use which has a huge impact on some counties in the state, **SEN. STANG** asked if it is important enough that this be exempted at the risk of jeopardizing contracts which those other communities receive tax base from which may keep their base low enough to entice other businesses to come into their area. **Mr. Barrett** said that if it would trigger some kind of disaster in other counties, that would be another question. He said there is a real line of distinction here that has not been brought out in terms of the taxation of the power that is going across the BPA lines, and that is that power is owned by private entities and it is the movement of that power across a public transmission. In this particular case, this is publically owned water going through a publically owned system provided to customers, so there is a significant line of distinction between these things.

SEN. STANG said that he lived in one of those counties that had had their tax paid under protest while the beneficial use tax was being litigated, and he said it does not matter whether they win or lose, that money sits there for the number of years that it is in court. **Mr. Barrett** said he was working for Sen. Melcher when

all of this occurred, but he reiterated that this is not the same situation.

CHAIRMAN DEVLIN asked if Butte-Silver Bow owned the water rights completely or are the water rights owned partly by those three companies. **Mr. McCarthy** said Butte-Silver Bow owns everything, all the water rights, all the infrastructure, all the pumps, all the permits. There is nothing here that is privately owned.

CHAIRMAN DEVLIN asked if under the contract one of these companies demanded more water, whether it would involve shutting off the water to private individuals, and **Mr. McCarthy** said that there are rights to claim water for short periods of time by these customers, but the capacity of the system has been increased to the point that there is excess capacity, so they will not take all of the capacity. **CHAIRMAN DEVLIN** asked what the limitation of this contract was, and **Mr. McCarthy** said that MRI can draw up to 18 million gallons per day. **CHAIRMAN DEVLIN** asked if that was in the contract, and **Mr. McCarthy** said it was, in the case of some sort of "upset." That has never happened. **CHAIRMAN DEVLIN** asked the capacity of the line, and **Mr. McCarthy** said it was about 22 million gallons a day. **CHAIRMAN DEVLIN** asked if these companies were charged the same rate for their water as residential users. **Mr. McCarthy** said they are not charged the same because this water is not treated. He pointed out that every customer of the municipal utility has an implied contract to draw water.

CHAIRMAN DEVLIN asked if they went through the tax appeal process and through the court, and **Mr. McCarthy** said they had been through the tax appeal process but not to court. He said they had been to the Revenue Oversight Committee and were unable to resolve the matter. They met with the Department and there was no resolution. The conclusion is that there is no way to change the situation, and that is why this bill has been created. He said if this matter is not resolved here, these three customers have said they will take it to court.

Closing by Sponsor:

REP. HARRINGTON said that the most important point that has been made is that this is a public water system that goes through public lines and is sold privately through contract. BPA, on the other hand, comes from private ownership, across public lines, and back to private. There is a big difference there. He said Butte-Silver Bow owns that water system and the water right, and they provide the water to these companies as a service. It should not be taxed. He urged do pass.

The Department of Revenue provided a memo regarding properties taxed under the privileged/beneficial use tax, **EXHIBIT(tas53a01)**.

HEARING ON HB 108

Sponsor: REPRESENTATIVE EMILY SWANSON, HD 30, BOZEMAN

Proponents: Ron deYong, Montana Farmers Union
Don Judge, AFL-CIO
Kelley Hubbard, Montana Senior Citizens Association

Opponents: Gordon Morris, Montana Association of Counties

Opening Statement by Sponsor:

REP. EMILY SWANSON, HD 30, Bozeman, said that this is one of the major tax pieces that is moving through this legislature this session. She said as natural resources have declined, homeowners have picked up an increasing share of the tax burden, and it is time to provide some property tax relief. **REP. SWANSON** provided a copy of the Fiscal Note for **HB 108** which had just been completed, **EXHIBIT(tas53a02)**. She also provided a packet of information containing a sheet outlining **HB 108**, **EXHIBIT(tas53a03)**; a memorandum from Lawrence Allen to Dave Woodgerd of the Office of Legal Affairs regarding the status of **SB 195** with relation to the Supreme Court decision and an impending case coming out of Yellowstone County, **EXHIBIT(tas53a04)**; a sheet entitled "Percentage Change in the Three Property Tax Classifications, related to Current Law Taxes Paid," which was created by a subcommittee of the House Taxation Committee, and from which Option B was adopted by the floor action in the House, **EXHIBIT(tas53a05)**; and a sheet prepared by **Brad Simshaw of the Department of Revenue** which shows how the shifting will occur between the classes of property, **EXHIBIT(tas53a06)**.

REP. SWANSON said this bill in its original form did assume that **SB 195** in its entirety would be thrown out, so the assumption was that we would be forced to return to a full appraisal cycle. She said that a phase-in is possible, but probably not more than five years. This bill takes the approach that the full appraisal from 1996 will be put into effect and then adjusts the impact of those appraisals so that the tax increases do not occur by adjusting the value of the property, the tax rate applied to that property, and the mills.

REP. SWANSON said an effort is made to ensure that the vast majority of homeowners do not receive a tax increase. She said a

homestead exemption has been created of 35% of the first \$200,000 of value of all residences. The definition of residential has been changed so that all rental properties will be included in this definition. She said this bill also creates a comstead exemption for the first 20% of commercial property to reduce the impact of the increase on commercial property, and reduces the tax rate from 3.816% to 3.5%, and the statewide mills have not been adjusted.

REP. SWANSON provided an amendment which corrects a drafting error which said that instead of giving a 35% exemption, it was written that it would be taxed 35% of the first \$200,000. The amendment corrects that drafting error and amends out any of the **CI-75** provisions which were written into the bill, **EXHIBIT (tas53a07)**.

REP. SWANSON said there is a fiscal impact on the General Fund of about \$6 million a year which will have to be considered. She referred the committee to Exhibit 5 which sets out the impacts to the various classes of property. She said that the homestead exemption is applied to property that has buildings. A vacant lot without buildings would not receive the exemption.

Proponents' Testimony:

Ron deYong, Montana Farmers Union, said that his organization believes that there should be a balanced approach to tax relief, and that homestead tax relief should be part of that balanced approach. He said they also believe that tax relief should fit within the budget parameters for the next biennium and future bienniums, and this tax proposal does that. He urged support for this legislation.

Don Judge, AFL-CIO, said he represents 40,000 families in Montana who support **HB 108**. He said his organization appreciates the fact that homeowners have been put out front in the tax relief arena. He said this legislation deals with the rising costs in homeowner taxes, and he urged passage.

Kelley Hubbard, Montana Senior Citizens Association, said her organization supports **HB 108**, especially with the redefinition of "residential" and the concepts of homestead and comstead. This will cover not only elderly homeowners, but also the elderly home renters.

Opponents' Testimony:

Gordon Morris, Montana Association of Counties, said that his organization is in support of tax relief and reform, but that he

opposes **HB 108** because there is a host of technical problems that are beyond remedy in the short time the legislature has left.

Mr. Morris said this bill represents another effort to piecemeal property tax reform, when in fact what is needed is a top-to-bottom approach. If the bill is truly intended to address the reappraisal cycle that concluded in 1996 and fully implement it and then allow levies to be adjusted accordingly, then you assume that the calculations for the homestead relief and the comstead provisions would be revenue neutral from a local government perspective. However, the Fiscal Note says that the effect on local government revenues is "dependent upon the reaction" of local governments to changes in their tax base. He said it then refers you to assumption 11 on page 2, which does not say anything. He said the real issue is in assumption 7, which says that "this proposal will result in a decrease." The decrease in taxable value in FY 2000 is \$30 million and \$31 million in FY 2001. He said this legislation will result in counties losing money, and therefore he opposes **HB 108**.

Questions from Committee Members and Responses:

SEN. STANG asked whether the language in Section 6 of the bill was intended to read dollars or mills, or if it was just referring to dollars. **REP. SWANSON** said the intent was to allow the local governments more latitude to determine which is to their benefit. It is intended that local governments be revenue neutral and be kept whole, and that is accomplished by allowing them to determine whether that was better affected through levying the same number of dollars or the same number of mills.

SEN. STANG asked, then, if **Mr. Morris's** concerns about local governments losing money are unfounded because counties are helped in both ways, and **REP. SWANSON** said the intent was to help the counties. She said that if that does not work in the way this is worded, she would be open to discussing changes.

SEN. STANG asked what the possibilities in this session are in terms of tax reform with the sales tax or some other form of consumption tax. **REP. SWANSON** said that even if a sales tax or some form of a consumption tax does go to the ballot, it is going to be several years, and this issue is here now. She said half of **SB 195** has been declared unconstitutional and the other half has a pending court case on it, and if that is all thrown out, the full appraisal is still here.

SEN. STANG asked **Greg Petesch of the Legislative Services Office** what the consequences would be to the legislature if the case pending in Yellowstone County on **SB 195** should come forward and it is declared unconstitutional. **Mr. Petesch** said that in the

Roosevelt decision the court gave some hints as to the likelihood of that scenario playing out. If the second challenge is finally decided prior to legislative action, those 1996 values would probably be put in place. **SEN. STANG** asked **Mr. Petesch's** opinion on how the court might decide on that issue, and he said it appears that only two justices, based on the Roosevelt decision, would hold **SB 195** completely valid. It appears that they would also, absent some legislative action, find the remainder of **SB 195** invalid.

SEN. STANG asked, then, if it would be to the legislature's advantage to find a solution to property taxes other than relying on the **SB 195** decision, and **Mr. Petesch** said the present decision is very narrow, addressing only the specific issue of Mr. Roosevelt. He said there are things that the legislature could do that would mitigate another challenge and possibly even moot another challenge.

CHAIRMAN DEVLIN asked, assuming that **SB 195** is thrown out, whether there was anything in this bill to address the two years when the 1996 values come in, in 1997 and 1998, to prevent the Department or local governments from backing up into 1997 and 1998 to collect those property taxes lost. **REP. SWANSON** said there was nothing in the bill. She said if the legislature makes changes in the statutes in this session sufficient that it essentially moots the case in Yellowstone County, then litigation will have to begin over, and as we have changed the statutes, for them to go back retroactively will be much more difficult.

CHAIRMAN DEVLIN asked if this legislature should address those years just in case, and **REP. SWANSON** said she did not think it was necessary. She said there would be good legal standing if the statutes were changed today and go forward in good faith, we will be on sound legal ground.

CHAIRMAN DEVLIN asked **Mr. Petesch** the same question. **Mr. Petesch** said that if those taxpayers did not challenge their assessments, the statute that is in place on tax appeals would probably take care of that problem. If the court, however, were to throw out the entire **SB 195** system and were to put in place those 1996 values, the decision should be prospective in much the same way that the school funding case was prospective so that the administrative nightmare would not be created to try to impose taxes for time periods that had already passed.

SEN. ELLIS asked **Mr. Morris** if he would like to address the question just asked of **Mr. Petesch**, and he said he would. He said he had just been advised the day before that the Department of Revenue is telling assessors to fully implement the reduction in valuations under the Roosevelt decision and to proceed with

the refunds. **CHAIRMAN DEVLIN** asked the Department of Revenue if they would comment on that. **Mr. Woodgerd** said the Department's position is that they will refund only those people who have appeals pending. There are probably less than 20 of those statewide. **CHAIRMAN DEVLIN** asked if the deadline is passed to file appeals on those, and **Mr. Woodgerd** said that was correct.

SEN. ELLINGSON asked if the term homestead in this bill referred to any residential property, whether it is the primary residence or not, and **REP. SWANSON** said that was correct, and that was to pass some relief on to renters. **SEN. ELLINGSON** asked about estimated changes in tax collections in **HB 108** and how the bill impacts the other classes of property that are not primary targets. **REP. SWANSON** said the assumption in these assessments is that these are comparisons to current law, not full reappraisal, and this assumes that in those counties in which the assessed values did not increase as much as the average over the state or as much as these homestead and comstead exemptions apply, they will have to shift their local mills.

SEN. ELLINGSON asked if the impact, then, was \$6 million on the General Fund, and **REP. SWANSON** said that was correct. **SEN. ELLINGSON** said that the reduction in taxes on class four is listed as \$31 million, and he wondered if that was \$31 million to the state General Fund or statewide. **REP. SWANSON** said that was \$31 million statewide.

SEN. ELLINGSON then asked **Brad Simshaw of the Department of Revenue** the same questions, and he said that the \$31 million is a tax savings for that group of property owners, and from that point of view, that is the tax savings overall. If viewed from the local government standpoint, all sections of property are paying a little bit more taxes and overall it evens out except for the General Fund. **SEN. ELLINGSON** asked about the mechanics of that evening out, and **Mr. Simshaw** answered that the analysis is performed by applying the components of the bill, the homestead and comstead relief, reduction in tax rate, to each individual taxing jurisdiction in the state. He said he would look at, after applying those components, what the tax base looks like in the taxing jurisdiction in comparison to current law. If it is a reduction of 5%, the mill levy in that county will raise 5%, thereby generating the same revenue as current law. **Mr. Simshaw** said that local jurisdictions will have the same revenue as under current law. The \$6 million impact to the General Fund is a combination of the lowering of the statewide taxable value overall and a GTB impact.

SEN. ECK asked if **HB 108** had any phase-in, and **REP. SWANSON** said it did not. She said it implements the full appraisal and then creates a reappraisal cycle of three years and instructs the Department of Revenue to begin implementation. She said that she would be agreeable to making adjustments in the implementation or phase-in. **SEN. ECK** asked if the House Taxation Committee had considered a five-year phase-in, and **REP. SWANSON** said it had not.

SEN. ELLIS, referring to Assumption No. 7 and Exhibit No. 5, said the figures are very similar even though one talks about taxes and the other talks about taxable value, and he wondered if the \$31 million might be just residential class four. He also asked how there could be a residential "other" class four and a commercial class four. **REP. SWANSON** said that all of that is in class four and will remain there, so there is no distinction. Just by the creation of this exemption, it creates this "other" class four, which refers to bare ground, vacant lots.

SEN. ELLIS then asked about Assumption No. 7 and the exemptions and the reduction of the multiplier to 3.5%. He said it appears that class four is not held harmless, but that the bill has reduced the value of class four by \$31 million taxable value in the two years which this Fiscal Note addresses. **REP. SWANSON** said she had not had a chance to compare the fiscal note to Exhibit No. 5 nor to discuss it with **Mr. Simshaw**, so she said she was not entirely clear under Assumption 7 why there is such a close correlation between that and the taxes paid.

SEN. ELLIS then asked **Mr. Simshaw** the same questions. **Mr. Simshaw** said it was coincidental that those numbers are coming out that close. **SEN. ELLIS** said his question is whether the result of the three changes is that the total value of class four property is not held harmless but is dropped by \$31 million the first year and \$32 million the second year, and **Mr. Simshaw** said that was correct. He said the \$31 million tax decrease is the property tax savings for the residential homestead. The \$31 million taxable value decrease is the combination of the components of the bill. He also said that for those properties that will receive the residential property tax relief, their taxable value will decrease about \$80 million. The class four residential vacant land taxable value will increase by \$35.6 million, and that weighs out to get the overall taxable value decrease of \$30 million.

SEN. GLASER asked if the "other" class four, which is the undeveloped lots under 20 acres, had a 33% increase, and **Mr. Simshaw** said that was correct. **SEN. GLASER** asked if this was because of the bill itself, and not any change from the freezing

in **SB 195**. **Mr. Simshaw** said it is a comparison of taxable value and estimated taxes paid by that component of property and comparing current law with the components of the bill. **SEN. GLASER** asked, then, about the class ten 211% increase and whether that was because of the freezing in **SB 195** and the effects of this bill, and **Mr. Simshaw** said that was correct.

SEN. STANG asked what effect the Court's decision on **SB 195** will have on the revenue of this in regard to those people who receive a reduction. **Mr. Simshaw** said the change in taxable value, if those properties which have a decrease are given their full decrease, results in only 5% of class four property receiving a decrease in the 1997 reappraisal, and he said that 5% could be applied to the overall class four taxable value. However, he said this appears to be a segment of the class four property which tends to be the lower value of property, so he did not think that class four property would decrease more than 2% or 3%.

SEN. STANG asked if he knew what the dollar value of that would be, and **Mr. Simshaw** said that he did not know, but that it is something the Department could provide.

SEN. DEPRATU asked, in reference to commercial property, what percent the tax would increase under his assumptions, and **Mr. Simshaw** said he had a value of about a 4% increase. **SEN. DEPRATU** then asked about timberlands and whether it would increase 2%, and **Mr. Simshaw** said it was an increase from \$2.83 million currently and increasing \$3.1 million, a 211% increase.

SEN. ELLIS also asked the Department to provide the real value of residential property and what percentage of the taxes are paid by class four property. **Mr. Simshaw** said he would provide that.

Closing by Sponsor:

REP. SWANSON said she appreciated the thorough hearing. She said it is residential property owners who are pressuring for some tax relief, and she encouraged the committee to take this matter seriously, study it thoroughly, and move it ahead as quickly as possible. She offered any help she could provide. She said **SEN. STANG** would carry this bill.

EXECUTIVE ACTION ON SB 514

Motion: **SEN. ELLINGSON** MOVED SB051403.ALH, **EXHIBIT**(tas53a08).

Discussion:

SEN. ELLINGSON said this amendment is very narrow and simply deletes the rollback tax and application of a penalty to the taxes on the rollback. He said he feels that it is important to have counties assess penalties on taxes that are unpaid when the taxpayer knows or should have known that he should have been paying those taxes, but in the instances described in this bill, that is not the case and he did not feel a penalty on a rollback tax in this particular case should be assessed. He said that is the rationale of the amendment.

Vote: Motion carried unanimously, 9-0.

SEN. DEPRATU said he feels that the bill tends to be punitive. It appears to him that a very narrow group of property taxpayers is being targeted, and it is not good tax policy.

SEN. STANG said he feels that the bill as written does nothing. If these entities wanted to decide to make dummy corporations for every little piece of land they have, they could get around this. They will never pay the rollback tax. He said there is some credibility to the concept, but this bill is not going to accomplish it.

SEN. ELLIS said he felt this bill threatens property rights, and he was not in favor of that.

Motion/Vote: SEN. ELLIS MOVED THAT SB 514 BE TABLED. Motion carried 9-0.

EXECUTIVE ACTION ON SB 212

Mr. Heiman distributed an amendment that dealt with the applicability date.

Motion/Vote: SEN. DEPRATU MOVED SB021201.ALH, **EXHIBIT(tas53a09). Motion carried 9-0.**

Motion: SEN. STANG MOVED TO REMOVE THE AMENDMENTS OF SEN. DEVLIN AND SEN. ECK WHICH WERE PUT ON PREVIOUSLY.

Discussion:

SEN. STANG said he thought the sponsor and the people who requested this bill had a purpose, and that was to provide an inventory tax credit for what they consider to be an inventory tax on their cars. He said **SEN. DEVLIN'S** amendments reduced that and put some other people into this bill who really, he felt, should not have been included. He said the amendments also reduce the amount of money that goes to the Heritage Fund from

\$200,000 to \$100,000, and he believes that is contrary to the purpose that the sponsor had in bringing this bill.

CHAIRMAN DEVLIN said that if the committee wanted to give tax relief to the rental companies, there should be a bill brought in to do specifically that. He said he would resist **SEN. STANG'S** amendment.

SEN. ECK said she would support the amendment, even though it does take off her amendment regarding motorhomes.

Vote: Motion failed 3-6, with Devlin, Bohlinger, Ekegren, Ellis, Glaser and Depratu voting no (Roll call vote #1).

Motion/Vote: **SEN. ELLIS MOVED THAT SB 212 BE TABLED.** Motion passed 6-3, with Eck, Ellingson and Stang voting no (Roll call vote #2).

DISCUSSION ON COMMITTEE BILL REDUCING RENTAL CAR TAXES

SEN. DEPRATU said that he felt that there was a legitimate and serious concern in the area of rental car taxes. He said automobiles are their inventory, and other inventories are not taxed, but these rental cars are being taxed. He said there is a legitimate concern that they are disadvantaged competitively because of the price of car licenses in Montana, even with the reduction in **SB 260**.

SEN. DEPRATU said that the large rental car companies bring cars in from out of state with foreign licenses during the season from Memorial Day to Labor Day and compete directly with the companies here in Montana who have to license in Montana.

SEN. DEPRATU asked if the committee would consider taxing rental cars, loaner cars and limo vehicles, because it is his opinion that they all fall in the same category at a .5% rate as opposed to the 1.5% that is in **SB 260**, or if they would possibly consider imposing a 4% sales tax on that rental agreement should a selective sales tax be a consideration.

CHAIRMAN DEVLIN reiterated that **SEN. DEPRATU'S** motion is for a committee bill to give the rental car companies relief down to .5% rather than the 1.5% currently, and **SEN. DEPRATU** said that was correct.

SEN. STANG asked where the 1.5% new car tax goes, and **Mr. Heiman** clarified that this money would go into the Highway Nonrestricted Account.

SEN. STANG asked where **SEN. DEPRATU** would put the 4% sales tax, should that be the choice, and **SEN. DEPRATU** said that it was his feeling that that should go back to the tourist-related infrastructure or Heritage Fund, getting it back to some of the use that was presented in the earlier bill. **SEN. STANG** asked how much that 4% would raise on rental cars in Montana, and **SEN. DEPRATU** said it would be just over a million dollars.

SEN. STANG said he would have a problem with reducing the amount that goes into that account without knowing what comes out of it. He said he would have to resist the motion.

SEN. DEPRATU said that he would be fine with just the reduction if the committee was agreeable.

Motion: **SEN. DEPRATU MOVED FOR A COMMITTEE BILL WHICH WOULD REDUCE THE 1.5% NEW CAR SALES TAX TO .5% FOR RENTAL CARS, LOANERS AND LIMOS.**

Discussion:

SEN. ELLINGSON asked if voting for this motion would mean that they were voting to have a bill drafted that would then be considered at hearing. **CHAIRMAN DEVLIN** said it would be a bill that is created and then would come to this committee for hearing. **SEN. ELLINGSON** said with that understanding, he would vote in favor of drafting a bill and having a hearing on it.

Vote: Motion carried 8-1 with Stang voting no (Roll call vote #3).

DISCUSSION ON COMMITTEE BILL FOR VENTURE COW

CHAIRMAN DEVLIN said that there is a proposal to move a large dairy-type operation into eastern Montana, and they are looking for a tax break. He said the legislature has given tax breaks to other endeavors such as this. He said this will not compete with other dairies in Montana. He asked **SEN. McNUTT** to explain the project to the committee.

SEN. McNUTT said this project is called West Crane Dairy. They are anticipating a move to either eastern Montana or North Dakota, and presently North Dakota has a significant tax advantage. He said the total tax implications in Montana are \$146,000, and in North Dakota it would be in the neighborhood of \$43,000 to \$46,000. He said he is encouraging a tax break to entice this project to Montana.

SEN. McNUTT said that this project would have about 3,000 milking cows, as compared to the largest dairy in the state presently which has 580 cows. He said once the first one is on board, American Cheese has said they are interested in putting in additional dairies and a processing plant. The entire program could end up employing more than 500 people.

SEN. McNUTT said the bill must specifically state that this product has to be exported from the state of Montana and will not be competing with Montana's present dairies. He said that this could be only the beginning of encouraging these dairies in Montana, others may follow. He said if we do not give this tax break, they will definitely move into North Dakota.

CHAIRMAN DEVLIN asked on what taxes he was requesting relief, and **SEN. McNUTT** said he was requesting the tax relief on business equipment property and the livestock tax. He said he is not requesting relief on the land tax or the building tax because they do have to pay that in North Dakota, and he does not feel that they need an advantage over North Dakota in that respect. He said these two tax breaks would put Montana on a level playing field with North Dakota.

SEN. STANG asked if these people have looked at doing the same thing they did for the silicone plant in Butte and putting in a tax increment finance district to alleviate those taxes rather than exempting every new business that comes to the state, and **SEN. McNUTT** said that that had been considered, but there is not enough time. He said this company's projected time frame is to have the building and the stalls done by October. They have to get 600 head of cows in there to start this operation, so they are working on a very tight time frame.

SEN. STANG asked if there was any danger that the other dairies in the state may want to take advantage of this situation also.

SEN. McNUTT said he did not think that was a concern. He said the dairy people are in support of this concept as long as this is earmarked for this type of dairy.

SEN. STANG asked if dairies in the state have indicated how much of their product they ship out of state now and whether they could ship all of their product out of state and have it brought back in the state so they could benefit from the tax, and **SEN. McNUTT** said that is why he wants to be sure that the definition specifies dairies and processing plants that are built henceforth, nothing retroactive. He said the dairies have no problem with that concept.

Motion: SEN. ELLIS MOVED A COMMITTEE BILL TO OFFER THIS TAX RELIEF ON BUSINESS EQUIPMENT TAX AND LIVESTOCK TAX FOR THIS "VENTURE COW" PROJECT.

SEN. ELLINGSON asked how many jobs would be created by the initial phase of this project, and SEN. McNUTT said it would involve 60 to 70 jobs. SEN. ELLINGSON asked what the wages would be for those positions, and SEN. McNUTT said they would be anywhere from \$9 to \$15 per hour, depending on the labor classification. SEN. ELLINGSON asked about benefits, and SEN. McNUTT said he did not know that. He went on to say that this type of business is not run with transient help, so they will be paying good wages and have good benefits to encourage people to stay.

SEN. DEPRATU said he favored bringing forth a committee bill. He said this is a good example of how Montana is not competitive, and the jobs created and the income generated for Montana is a positive thing.

Vote: Motion carried 9-0 (Roll call vote #4).

EXECUTIVE ACTION ON SB 441

CHAIRMAN DEVLIN said this is SEN. CHRISTIAENS'S bill that has to do with the methods of appraisal under certain conditions on rental properties. He said there are no amendments.

Motion: SEN. ELLIS MOVED THAT SB 441 DO PASS.

Discussion:

SEN. STANG said that the Department of Revenue was the only opponent and Dennis Burr and Ronda Carpenter were the only proponents. He asked whether this might risk another court case like the Albright case, and CHAIRMAN DEVLIN said that was the Department's argument.

CHAIRMAN DEVLIN referred the committee to line 26, and said that he did not think this demands that the Department rely on comparable sales or construction costs, it just puts it as a priority.

SEN. ECK said she thought the question here is that they have used the income method, saying that they don't have the other two available. She said that when you have good comparable sales and construction costs, that those are preferable to income. She said she thought it ought to be moved out of committee.

SEN. ELLIS said that the industry had indicated that in many instances rentals can be inflated by certain factors which are sometimes above board and sometimes are not, but he wondered why you would jeopardize the state's legal position. He said other

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factors are adjusted to be more in line with comp sales quite often, and he said he would vote against this bill.

SEN. ELLINGSON said he had no objection to the intent, but he did not think that the Department of Revenue should be put in a position that is different from any other business person who is trying to find out what the value of his or her property is when they get an appraisal. He said a professional appraisal involves the use of all three methods. He said as he reads this bill, if there is relevant information on comparable sales or construction costs which indicates a lower market value than the capitalization of income, then the capitalization of income is supposed to be disregarded. He said that is not what an appraiser does. He takes into consideration all three approaches. He said he would have to vote against it presently, but if the committee would indulge him, he would request an amendment be drafted so that all three of those things could be considered and excessive reliance on the capitalization of income approach could not be made by the Department of Revenue.

CHAIRMAN DEVLIN said what he thought had been happening is that the appraisers have been picking whatever comes out the highest. He said they can still use the other forms of appraisal, but if they are just going to use whatever form of appraisal is the highest, that is not right, and he said he thinks that is what the bill is addressing.

SEN. STANG asked if these people had taken their situations to the tax appeal board, and if so, what the board's decision was, and he was told that the Department almost always lost.

SEN. GLASER said he would support **SEN. CHRISTIAENS** on this bill.

Vote: Motion carried 7-2 with Ellingson and Stang voting no.

ADJOURNMENT

Adjournment: 11:15 A.M.

SEN. GERRY DEVLIN, Chairman

SANDY BARNES, Secretary

GD/SB

EXHIBIT (tas53aad)